TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 23

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION, PETITIONER,

vs.

THE WILLETT COMPANY, AN ILLINOIS CORPORATION

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED MARCH 13, 1952
CERTIORARI GRANTED MAY 5, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

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CITY OF CHICAGO, A MUNICIPAL CORPORATION,
PETITIONER,

vs.

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

INDEX

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[fols. 1-4] [Caption omitted]

[fol. 5]

IN THE SUPREME COURT OF ILLINOIS, NOVEMBER TERM, A. D. 1949

CITY OF CHICAGO, a Municipal Corporation, Appellant,

vs.

THE WILLETT COMPANY, an Illinois Corporation, Appellee

Appeal from Municipal Court of Chicago

Honorable R. P. Drymalski, Judge Presiding

Abstract of Record from Municipal Court of Chicago

Placita COMPLAINT—Filed March 10, 1949

Complaint filed by the City of Chicago March 10, 1949, in the office of the Clerk of the Municipal Court, No. 49 MC 131413, which, omitting the caption and vertification, is in words and figures as follows:

> Walter Gorski being first duly sworn, on oath, on information and belief, deposes and says, that The Willett Co. D. M. Goodwille Mgr. heretofore, to wit, on the 1st day of March 1949 at the City of Chicago, did then and there violate the Municipal Code of Chicago, to wit:
>
> Did then and there conduct, operate and carry on the business of Carters License Tax 100 trucks on the premises known as 700 S. Desplaines St., Chicago, Illinois, without first having obtained a license so to do.
>
> In violation of Chapter 163-2 of the Municipal Code of Chicago.

[fol. 6] Order entered March 10, 1949 granting leave to file complaint instanter and cause postponed and set for trial April 20, 1949.

Order entered April 20, 1949 cause postponed and set for trial May 4, 1949.

Order entered May 4, 1949, cause postponed and set for trial May 17, 1949.

Order entered May 17, 1949, cause postponed and set for trial June 16, 1949.

Order entered June 16, 1949, cause postponed and set for trial July 7, 1949.

Order entered July 7, 1949, cause postponed and set for trial July 11, 1949.

IN MUNICIPAL COURT OF CHICAGO

WAIVER OF JURY TRIAL—July 11, 1949

Thereupon, defendant on July 11, 1949, defendant elects to waive a trial by jury and cause is submitted to court for trial without a jury.

IN MUNICIPAL COURT OF CHICAGO

JUDGMENT

Now come the parties to this cause, and thereupon this cause comes on in regular course for trial before the Court without a jury and the Court having heard the evidence and the arguments of counsel, and being fully advised in the premises, enters the following finding, to-wit:

"The Court Finds the Defendant Not Guilty."

This cause coming on for further proceedings herein, it is considered by the Court that final judgment be entered on the finding herein, that the plaintiff take nothing by this suit, and it is ordered that said defendant be and hereby is discharged.

IN MUNICIPAL COURT OF CHICAGO

CERTIFICATE OF TRIAL JUDGE

Certificate of the Judge that validity of a Municipal Ordinance is involved, filed July 12, 1949, which, omitting caption and signature, is in words and figures as follows:

[fol. 7] I, Raymond P. Drymalski, Judge of the Municipal Court of Chicago, Illinois, before whom and

by whom the above entitled cause was tried and final decree and order therein entered, do hereby certify that there is involved in said cause and in said final decree and order the validity of a municipal ordinance, and I further certify that in my opinion the public interest requires that an appeal herein shall be taken directly to the Supreme Court of Illinois.

In Municipal Court of Chicago

Notice of Appeal—Filed July 18, 1949

I

City of Chicago, a municipal corporation, plaintiff-appellant above named, hereby appeals from the final judgment order entered in this cause July 11, 1949, finding the issues in favor of the defendant on the complaint by the plaintiff, that the defendant had violated chapter 163 of the Municipal Code of Chicago, and particularly section 163-2 thereof.

[fol. 8] II

Appellant prays that said judgment may be reversed or in the alternative, that said judgment be vacated and the cause remanded for a new trial.

City of Chicago, a Municipal Corporation, Plaintiff-Appellant, by Benjamin S. Adamowski, Corporation Counsel, Its Attorney.

July 18, 1949.

Notice of filing Notice of Appeal filed July 18, 1949.

Praecipe for Record and Proof of Service thereof filed July 18, 1949.

Order entered July 27, 1949, approving Report of Proceedings and ordering same filed.

Report of Proceedings filed July 27, 1949, at the hearing of the above entitled cause before the Honorable Raymond P. Drymalski, Judge of said Court, on the 7th day of July, A. D. 1949.

Present: Mr. Benjamin S. Adamowski, Corporation Counsel for the City of Chicago, by Mr. Marvin Peters, Assistant Corporation Counsel, Appeared for Plaintiff;

Messrs. Daley & Lynch, by Mr. William J. Lynch, Appeared for Defendant.

The Court: Leave given to Mr. Peters to amend the complaint.

[fol. 9] Mr. Lynch: I will ask leave of the Court to file a stipulation mentioned heretofore on behalf of the defendant and the plaintiff in this case.

The Court: Stipulation may be filed.

Mr. Peters: We are going to proceed here to file the stipulation, and then, you are going to put on some evidence.

Mr. Lynch: That's right, on behalf of the defendants.

Stipulation, omitting signatures and caption, in words and figures as follows:

IN MUNICIPAL COURT OF CHICAGO

STIPULATION OF FACTS

It is hereby stipulated by and between the attorneys for the respective parties herein that the following matters and facts, material to the controversy in this cause may be incorporated in the transcript of the record.

It is further stipulated and agreed that the defendant herein expressly reserves the right to object to Chapter 163, Sections 1 to 4 of the Ordinances, of the City of Chicago, on the ground that said Ordinance is void and of no legal effect because it is in conflict with the Constitution of the United States of America, the Constitution of the State of Illinois, Section 23-51, of the Cities and Villages Act, of the State of Illinois and the Illinois Truck Act, Section 240 to 281, of the Motor Vehicle Act, of the State of Illinois.

During all the times herein mentioned, there were in effect, in the State of Illinois, the statutory provisions hereinafter set forth:

[fol. 10] Section 23-51, of the Cities and Villages Act contains the following provisions:

> Smith-Hurd Illinois Annotated Statutes, Chapter 24, Article 23-51. "To license, tax, and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, and all others pursuing like occupations, and to prescribe their compensation."
>
> Smith-Hurd Illinois Annotated Statutes, Chapter 95½, Motor Vehicles, Section 240.

"Legislative declaration of necessity for truck traffic regulation.

"The legislature hereby declares that the rapid increase of truck traffic and the fact that under the existing laws many trucks designed or used for the transportation of property are not effectively regulated have increased tremendously the dangers and hazards of public highways, thus necessitating the enactment of more stringent regulations for the protection of the general public in the use of the highways; that ruinous competitive practices among carriers of property by truck and for hire are directly responsible in a considerable degree for the appalling loss of life and bodily injury resulting from such traffic hazards; and that in order to conserve the highways, reduce traffic hazards and accidents and promote a sound, economical and efficient system of highway transportation to serve the best interests of the general public, this Act is considered imperative."

That on or about January 14, 1949, the City Council of the City of Chicago enacted a certain Ordinance relating to the licensing of carters in the City of Chicago. The Ordinance is set forth in the bound volume of the Municipal Code of Chicago, as adopted January 14, 1949, in Chapter 163 thereof as follows:

[fol. 11] Be it ordained by the City Council of the City of Chicago:

Section 1. This Ordinance shall be known as Chapter 163 of the Municipal Code of Chicago, and shall be designated as the Carters Ordinance:

Chapter 163

Carters

163-1. Every express wagon, cart, truck, dray, wagon, automobile, autocar, auto truck, or other vehicle of any kind, either drawn by animal or self-propelled, which shall be operated, driven or employed for the purpose of transporting or conveying bundles, parcels, furniture, trunks, baggage, goods, wares, merchandise, produce, or other articles within the city for hire or reward,

shall be deemed a cart within the meaning of this chapter, whether such vehicle is employed or hired from any public stand, public way, barn, garage, office, or other place in the city by the day, week, month or year.

Any person engaged in the business of operating a cart shall be deemed a carter.

163-2. An annual license tax is imposed upon every carter for each cart operated or controlled by him, according to the following schedule:

Horsedrawn vehicle—	
One-horse	$2.75
Two-horse	5.50
Three-horse	6.25
Four-horse	11.00
Six-horse	13.75
Automotive vehicles—	
Capacity not exceeding two ton-	$8.25
Capacity exceeding two but not exceeding three tons	11.00
Capacity exceeding three but not exceeding four tons	13.00
Capacity exceeding four tons	16.50

[fol. 12] No license shall issue except upon payment of the full annual license tax.

It shall be unlawful for any person to engage in the business of a carter without first having paid such license tax.

163-3. An application shall be made in conformity with the general requirements of this code relating to applications for licenses and such application shall include a statement of the number of vehicles with such details of description and on such forms as may be required by the City Collector.

The City Clerk shall deliver to each carter, upon payment of the license tax herein imposed, a license emblem which shall bear the words "carter" and the numerals designating the year for which such license tax has been paid. It shall be the duty of the carter to affix the license emblem in a conspicuous place on the vehicle. It shall be unlawful for any person to drive a cart which does not bear such license emblem.

163-4. Any person violating any of the provisions of this chapter shall be fined not less than fifty dollars nor more than two hundred dollars for each offense and each day such violation shall continue shall be regarded as a separate offense.

Section 2. Chapter 163, entitled "Public Carters" as it has heretofore appeared in the Municipal Code of Chicago is hereby repealed.

Section 3. Chapter 132, entitled "Furniture Movers" of the Municipal Code of Chicago, is hereby repealed.

Section 4. This Ordinance shall be in force and effect upon passage and due publication.

During all the times herein mentioned the plaintiff, City of Chicago, was a Municipal corporation organized and existing under the provisions of the Act of the General Assembly of the State of Illinois, entitled "An Act to provide [fol. 13] the incorporation of Cities and Villages," approved April 10, 1872, in force July, 1872, and the amendments thereto and the Acts supplemental thereto.

The Defendant, the Willett Company, an Illinois corporation located at 700 South Desplaines Street, Chicago, Illinois, was at all times mentioned herein engaged in the business of transporting property by motor vehicles for hire in the City of Chicago and the State of Illinois, and as also engaged as a contract carrier of commodities and freight generally by motor vehicle, operating from points and to places within the State of Illinois to points and places in the States of Indiana and Wisconsin.

That on or about the first day of March, 1949, the Willett Company advertised and held itself out to serve the public and connecting carriers and forwarding companies generally, up to the limit of his capacity either (a) by leasing trucks with drivers to shippers by the hour, day, week, year or other period, (b) by making contracts with shippers to perform all trucking for a fixed period, (c) by giving occasional service or handling single shipments in local cartage for any shipper, at a rate per hundred pound, per ton, per piece, or other unit, (d) by distributing pooling cars and (e) by rendering collection and delivery service, station or sub-station service for rail, water and highway motor carriers and forwarding companies either under contract or on some other basis.

The motor vehicles operated by the Willett Company will in the course of a day's business transport property for hire:

1. From points within the City of Chicago to other points within the City of Chicago.

[fol. 14] 2. From points within the City of Chicago to other points in the State of Illinois outside the City of Chicago.

3. From points in the State of Illinois outside the City of Chicago to points within the City of Chicago.

4. From points in City of Chicago to points in Indiana.

5. From points in Indiana to points in the City of Chicago.

6. From points in Illinois, outside of the City of Chicago, to points in Indiana.

7. From points in Indiana to points in Illinois, outside of the City of Chicago.

8. From points in City of Chicago to points in Wisconsin.

9. From points in Wisconsin to points in the City of Chicago.

10. From points in Illinois, outside of the City of Chicago to points in Wisconsin.

11. From points in Wisconsin to points in Illinois, outside of the City of Chicago.

The Willett Company does not use or operate any horses or teams in the conduct of its business.

The Willett Company has not complied with the provisions of the Carters Ordinance as enacted by the City Council and has not secured licenses as provided therein.

The Willett Company does not solicit any business from any public stand or street in the City of Chicago, and the Willett Company has secured City Vehicle Licenses for all vehicles operated by them for the year 1949, and have complied with all City Ordinances that are necessary to be complied with to lawfully conduct its cartage business in the City of Chicago with the exception of the Carters Or-

[fol. 15] dinance herein in question.

The Willett Company has presently been granted authority from the Interstate Commerce Commission to operate as a common carrier, engaged in interstate commerce,

as evidenced by Certificate No. 20697, which certificate and authority is in full force and effect.

The Willett Company has filed with the Interstate Commerce Commission, the Willett Company Schedule No. 20, on the first day of July, 1948, and effective on the fourth day of August, 1948.

The Willett Company complies with all provisions of the Federal Motor Carrier Act of 1935, and all rules and regulations issued by the Interstate Commerce Commission relative to hours of service for its employes and rules of safety in the operation of its vehicles.

Pursuant to the provisions of the Illinois Motor Truck Act, the Willett Company has been granted authority to operate as a specialized, contract and local motor carrier of property in the State of Illinois said authority being evidenced by the following certificates, to-wit:

Local Carrier—Certificate No. 1132
Contract Carrier—Certificate No. 1163
Specialized Carrier—Certificate No. 11363

which certificates and authority are presently in full force and effect.

The Willett Company has complied with all other provisions of said Illinois Truck Act.

That the operations of the Willett Company are so diversified that one of the trucks may at various times during [fol. 16] the day haul to or from interstate contract carriers, common carriers and carload companies, in addition to haul between local industries and for them to points and places in Wisconsin, Indiana, and Illinois.

That no one vehicle operated by the Willett Company is engaged throughout any day of the year in a purely intrastate or local movement. Each vehicle of defendant during every single day of the year carries on it along with property which never leaves the city, property destined to some point in the State of Illinois outside the City of Chicago, as well as property destined to some point outside the State of Illinois.

That there are in the City of Chicago upwards of 1,000 persons, firms, or corporations engaged in the transportation of property by motor vehicles for hire and are transporting or conveying goods, wares, or merchandise upon the public streets of the City of Chicago.

That there are upwards of 2,000 individuals, firms, or corporations that are engaged in the transportation of property by motor vehicles for hire and are common and/or contract carriers of commodities and freight generally by motor vehicles, operating from points within the City of Chicago to points within the City of Chicago; from points within the City of Chicago to points within the State of Illinois outside the City of Chicago; from points within the City of Chicago to points in the State of Indiana and Wisconsin.

That there are therefore upwards of 3,000 individuals, firms or corporations so engaged, as to allegedly come [fol. 17] within the terms and provisions of this Ordinance, and who are similarly situated with the Defendants as to matters and things complained of herein.

That on or about the first day of March, 1949, the Defendant, the Willett Company, an Illinois corporation, was charged by the City of Chicago, with a violation of Chapter 163, of the Municipal Code of Chicago and on said date was served with an arrest notification commanding it to appear in the Municipal Court of Chicago on March 10, 1949, to answer the charge of engaging in the business of a carter, without having obtained a license to engage in such business.

It is further stipulated and agreed, that the annual budget of the City of Chicago as passed in January, 1949, provides no appropriation for the regulation of the business of Carters.

It is further stipulated and agreed that on the 14th day of January, 1949, the City Council of the City of Chicago passed the Carters Ordinance.

It is further stipulated and agreed that the terms of the Carters Ordinance do not impose any regulation upon the business of Carters nor does it prescribe any compensation to be received by Carters, but requires that Carters purchase an annual license for a certain fee.

[fol. 18] HOWARD L. WILLETT, JR., called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination

By Mr. Lynch:

My name is Howard L. Willett, Jr. I live at 1120 Lake Shore Drive. I am Executive Vice-President in The Willett Company, the defendant in this cause, continuously since 1932. The Company is engaged in the occupation of general trucking. In the course of our operation as general trucking, we engage in the hauling of interstate, intrastate, and local freight in the City of Chicago.

Q. Is it possible for you in your operation to separate your intrastate freight, your interstate freight, and your inter-city freight from your vehicles?

Mr. Peters: That is objected to unless Counsel lays a proper foundation. It is calling for the conclusion of the witness based on no facts in evidence.

The Court: I will overrule the objection.

A. No, we are not able to separate.

Mr. Lynch: Mr. Willett, could you withdraw from your interstate business and continue in your intrastate business?

Mr. Peters: I object for the same reason—nothing in the evidence here except that he is engaged in three different types of operation.

The Court: Why is that objectionable? I don't follow you.

Mr. Peters: Well, all he has testified to is all leading up to, he is engaged in interstate, intrastate, and inter-city operations.

[fol. 19] The Court: You can go into that on cross-examination. I overrule the objection.

Q. Could you withdraw from interstate business and continue in your intrastate business?

A. Not without considerable hardship.

Q. Could you withdraw from your inter-city, that is your local business, and continue either interstate or intrastate business?

A. No.

Mr. Peters: Let the record show my objection to the question.

The Court: All right.

The Witness. In other words, interstate, intrastate and local city business is not divisible. In general trucking we offer the public a flexibility of service.

Cross-examination.

By Mr. Peters:

The Willett Company and the Truck Lease Corporation of America together operate about 1,200 vehicles. Some are trucks, some are known as tractors, some are trailers, and included in there is the Willett transports. Operating under the name of The Willett Company I would say there are about 825 trucks.

Q. Are any of those 825 trucks operated in local transports where you transport from one point in Chicago to another point in Chicago?

A. I would say almost all of them were. We have contracts with certain concerns in Chicago to do all their hauling. Some of the larger contracts are with Pennsylvania Railroad, Acme Fast Freight, The Air Cargo, which represents all the airlines, Ryerson Steel Company, U. S. Steel Company, Youngstown Steel Company, H. J. [fol. 20] Heinz Company, Standard Brands—I don't know how many more you want. The Glidden Company, the Nubian Paint Company, the Durkee Famous Foods, the Soy Products Company, and Adams and Elding Paint Company each has a different address, all located within the City of Chicago.

We furnish the Glidden Company about a dozen trucks. When those trucks go to the Glidden Company they pick up articles at the Glidden Company and those articles are transported in part to points in the City of Chicago.

I don't know how much of that trucking service is local, interstate or intrastate. The Willett Company is paid by the truck and by the day, and some charges are by the hundred weight and by the mile. Our Company does not keep any record to determine the proportion of interstate as compared to intrastate and local operations. The same type of service we render the Glidden Company is rendered to all the other concerns that I mentioned.

As far as the entire operations of the Willett Company are concerned, there is no way in which we can determine the proportion of local transportation as compared to interstate and intrastate. The operations I have described are the same as on the first of March, 1949.

Redirect examination.

By Mr. Lynch:

Q. Now, Mr. Willett, state for example, that the Glidden Company—let's take one truck—It is possible in that operation, is it not, that a vehicle operating out of the Glidden Company may have on it in total load intrastate, interstate, and inter-city; is that correct?

A. That is correct.

[fol. 21] Q. And for the Pennsylvania Railroad, one of the customers that you have listed here, that would be—freight that is picked up from the railroad that would be interstate and delivered in and about the City of Chicago?

A. That is true.

Q. And also you pick up freight, would you not, in and about the City of Chicago for the Pennsylvania Railroad for places and points destined outside of the City of Chicago and the State of Illinois?

A. That is true.

Mr. Lynch: That is all if the court please.

Mr. Peters: No further cross.

(Which is all the testimony heard in the above entitled cause.)

Certificate of the trial judge that the Report of Proceeding is full, true and correct and ordering that same be filed.

Stipulation that original Report of Proceedings be incorporated by the Clerk of the Municipal Court in the transcript of the record.

Order entered August 2, 1949, granting leave to file amended Complaint *nunc pro tunc* as of July 7, 1949.

In Municipal Court of Chicago

Amended Complaint nunc pro tunc

Amended Complaint filed *nunc pro tunc* as of July 7, 1949, which, omitting the caption, signatures, and verification, is in words and figures as follows:

William T. Prendergast being first duly sworn, on oath, on information and belief, deposes and says, that The Willett Company, an Illinois corporation, heretofore, to wit, on the 1st day of March, 1949, at the City of Chicago, did then and there violate the Municipal Code of Chicago, to wit:

[fols. 22-23] 1. That the defendant, The Willett Company, an Illinois Corporation, did engage in the business and occupation of transporting and conveying bundles, parcels, furniture, trunks, baggage, goods, wares, merchandise, produce or other articles by motor truck within the City of Chicago for hire or reward.

2. That said defendant violated Chapter 163 of the Municipal Code of Chicago and particularly Sec. 163-2 thereof, in that said defendant failed to pay the annual license tax for the year 1949 as provided by Sec. 163-2.

In violation of Chapter 163 of the Municipal Code of Chicago.

Certificate of the Clerk of the Municipal Court of Chicago, August 16, 1949, certifying that the foregoing is a true, perfect and complete transcript of the record as per Praecipe and Stipulation.

Respectfully submitted, Benjamin S. Adamowski, Corporation Counsel of the City of Chicago, 511 City Hall, Chicago 2, Illinois, Attorney for Appellant; L. Louis Karton, Head of Appeals and Review Division; Louis H. Geiman, Marvin J. Peters, Assistant Corporation Counsel, Of Counsel.

[fol. 23a] IN THE SUPREME COURT OF ILLINOIS, NOVEMBER TERM, A. D. 1949

CITY OF CHICAGO, a Municipal Corporation, Appellant,

vs.

THE WILLETT COMPANY, an Illinois Corporation, Appellee.

Appeal from Municipal Court of Chicago. Honorable R. P. Drymalski, Judge Presiding

EXCERPTS FROM BRIEF AND ARGUMENT FOR APPELLANT—Filed December 20, 1949

[fol. 23b] (4) The issues and the Decision Thereon

The trial court made no specific findings of fact nor held any specific conclusions of law, but simply entered a general finding of "not guilty" in favor of the defendant (Abst. 2), and entered final judgment upon said finding that the plaintiff take nothing by its action and that the defendant be discharged (Abst. 2). Consequently, it is impossible to determine the precise grounds of the trial court's determination. However, some clue is afforded by the express reservation in the stipulation on the part of the defendant of the right to object to the ordinance on the ground that it was void and of no legal effect because in conflict with the Federal and State Constitutions, with Section 23-51 of the Revised Cities and Villages Act, and with the provisions of the Illinois Truck Act (Abst. 5). Further, the defend-
[fol. 24] ant, in its brief filed in the trial court, asserted specifically (1) that the City of Chicago was without statutory power to pass the ordinance in question; (2) that even if it ever had such power, it was withdrawn by the provisions of the Illinois Truck Act; and (3) that the ordinance was in any event invalid as an interference with and a burden upon interstate commerce, and thus violative of the commerce clause of the Constitution of the United States. It is manifest, therefore, that the judgment in favor of the defendant was necessarily based upon the trial court's conclusion that the ordinance was invalid and unenforceable on any or all of the grounds just enumerated.

The city, as the appellant herein, must necessarily assume that the trial court has determined all of the aforementioned issues against it, and hence we shall seek to demon-

strate herein that the trial court's decision was erroneous and should be overturned in respect of each and every such determination.

Errors Relied upon for Reversal

(1) The trial court erred in admitting, over plaintiff's objection, incompetent, irrelevant and immaterial evidence offered on behalf of the defendant.

(2) The trial court erred in finding the defendant not guilty.

(3) The finding of not guilty was against the law and the evidence.

(4) The trial court erred in entering judgment against the plaintiff and in favor of the defendant, and in ordering defendant discharged.

[fol. 25] (5) The judgment of the trial court was against the law and the evidence.

(6) The trial court erred in holding as a matter of law that the ordinance in question was in violation of the commerce clause of the Federal Constitution as an interference with or a burden upon interstate commerce.

(7) The trial court erred in holding as a matter of law that the ordinance was in violation of the Illinois Constitution with respect to the exercise by the City of Chicago of the taxing power.

(8) The trial court erred in holding as a matter of law that the enactment of the ordinance in question was beyond the power granted to the City of Chicago by Section 23-51 of the Revised Cities and Villages Act.

(9) The trial court erred in holding as a matter of law that the enactment of the ordinance in question was beyond the power of the City of Chicago on the ground that such power was withdrawn by the Illinois Truck Act.

(10) The trial court erred in holding as a matter of law that the enactment of the ordinance in question was beyond the power of the City of Chicago on the ground that such power was withdrawn by the Federal Motor Carrier Act of 1935.

[fol. 26] Points and Authorities

I

The ordinance here involved neither purports nor attempts to tax cartage operations extending beyond the corporate limits of the City of Chicago, but by its terms is confined solely to transportation "within the city", which, by well-settled definition, means from points within the city to other points within the city.

[fol. 27] II

The fact that the defendant company is also engaged in interstate commerce does not destroy the power of the City of Chicago to impose an occupation tax upon the defendant with respect to the intracity operations in which the defendant is admittedly engaged; and, in view of the express limitation of the ordinance to "Within the city" operations, the contention that it violates the commerce clause of the Federal Constitution is without foundation.

[fol. 28] III

The express limitation of the ordinance to intracity operations not only demonstrates its inherent validity, but also refutes the argument of "nonseparability" advanced by the defendant. Moreover, a showing of "nonseparability", without proof of "undue burden", will not invalidate an ordinance, limited to local business, as an infringement upon the federal commerce power.

IV

The Federal Motor Carrier Act of 1935 regulating interstate motor transportation did not withdraw from the several states or their municipalities the power of taxation or regulation of intrastate motor transportation.

Section 302 (b) of Federal Motor Carrier Act of 1935 (49 U. S. C. A., Section 302 (b)).

Tucker v. *Casualty Reciprocal Exchange* (D. C. Ga.), 40 Fed. Supp. 383.

Eichholz v. *Hargus* (D. C. Mo.), 23 Fed. Supp. 587.

[fol. 29] V

The express statutory power of Illinois municipalities to tax and license carters was not affected or impaired either by the enactment of the Illinois Truck Act of 1939 or of the Illinois Public Utilities Act.

[fols. 30-78] VI

The fact that the defendant company pays a city vehicle tax on its trucks for the privilege of using the city streets does not affect the city's power to levy an occupation tax upon the defendant with respect to its use of the same vehicles in its intracity freight trucking operations.

VII

The ordinance herein represents a proper exercise by the City of Chicago of the statutory power granted to municipalities to levy an occupation tax upon carters, and is in all respects valid and constitutional.

(a) Ordinances enacted pursuant to an express grant of power are presumed to be valid.

[fol. 79] In the Supreme Court of Illinois, November Term, A. D. 1949

City of Chicago, a Municipal Corporation, Appellant,

vs.

The Willett Company, an Illinois Corporation, Appellee

Appeal from Municipal Court of Chicago. Honorable R. P. Drymalski, Judge, Presiding

Excerpts from Brief and Argument for Appellee—Filed March 13, 1950

[fol. 80] Defendant's Theory of the Case

It is the Defendant's contention that:—

1. The ordinance defining a "cart" and "carter" does not limit the carriage of freight and merchandise to transportation where both the point of origin and point of desti-

nation of freight is in the corporate limits of the City of Chicago.

2. The intrastate, interstate and local operation of the defendant cannot be separated and the ordinance is therefore in violation of the commerce clause of the Federal Constitution and the Federal Interstate Commerce Act.

3. The Carters Act of the City of Chicago taxes an instrument of interstate commerce and constituted an infringement upon the commerce powers of the Federal Government and the Federal Motor Carrier Act.

[fol. 81] 4. The City of Chicago is without statutory power to tax motor carriers without regulating them and prescribing their compensation under the power granted in the Cities and Villages Act.

5. The ordinance of the City of Chicago taxing Carters is a subterfuge revenue measure to tax personal property contrary to law.

6. The Cartage Ordinance of the City of Chicago places an undue burden upon interstate commerce and an instrumentality of interstate commerce.

7. The Illinois Truck Act repeals the power of the city to tax, license and regulate the business of "Carters."

8. The ordinance is not uniform as to all Carters.

[fol. 82] Points and Authorities

I

The phrase "within the city" does not limit the operation of the Ordinance to transportation where both the point of origin and the point of destination are in the city.

II

The "Carter's Ordinance" constitutes an interference with, and a burden on Interstate Commerce in violation of the Federal Constitution.

III

The "Carter's Ordinance" is in violation of the Constitution of 1870 in that it is not uniform as to the class upon which it operates.

[fols. 83-108] IV

The Ordinance is beyond the grant of power authorized by the Cities and Villages Act.

V

The Illinois Truck Act repealed the right of the City to tax, license and regulate the business of Carters.

[fol. 109] IN THE SUPREME COURT OF ILLINOIS, NOVEMBER TERM, A. D. 1949

CITY OF CHICAGO, a Municipal Corporation, Appellant,

vs.

THE WILLETT COMPANY, an Illinois Corporation, Appellee

Appeal from Municipal Court of Chicago. Honorable R. P. Drymalski, Judge, Presiding

EXCERPTS FROM REPLY BRIEF FOR APPELLANT—Filed March 18, 1950

[fols. 110-111] I

Since the ordinance is suspectible of a proper and reasonable construction which will render it valid, defendant's insistence that it should be given an unconstitutional construction is unwarranted.

[fol. 112] II

Being confined to purely intracity cartage, the ordinance here neither interferes with nor burdens interstate commerce. Nor is defendant's claim of inseparability between its intracity, intercity and interstate operations to any extent sustained by the evidence.

[fol. 113] However, the defendant cannot insist on continuing in the intracity cartage business and still refuse to [fol. 114] pay the occupation tax levied by the city ordinance upon such business. Nor can it escape such tax by the simple device of using the same vehicles indiscriminately for intracity, intercity and interstate business, and then claiming that it cannot unscramble or disassociate one type of business from the other, without offering any evidence that it cannot, or that it even attempted to do so.

Moreover, inseparability alone is not enough to invalidate a local revenue measure. There must be shown, in addition, that the imposition of the tax actually results in an

undue burden upon interstate commerce. In this connection we quote from *Pacific Telephone and Telegraph Co.* v. *Washington Tax Commission*, 297 U. S. 403, (pp. 415-16):

> "No decision of this Court lends support to the proposition that an occupation tax upon local business, otherwise valid, must be held void merely because the local and interstate branches are for some reason inseparable."

In other words, even a showing of inseparability, without proof that it actually imposes an undue burden upon interstate commerce, is not sufficient. Certainly, a mere claim of inseparability is not enough. And it is not even claimed, much less shown, that the small license fee imposed by the ordinance is either unreasonable, burdensome, oppressive or confiscatory.

[fol. 115] III

The carters ordinance satisfies the constitutional requirement of uniformity as to the class upon which it operates.

[fol. 116] IV

The ordinance is within the express grant of statutory power to municipalities "to license, tax, and regulate * * * carters * * * and to prescribe their compensation."

[fol. 117] V

The Illinois Truck Act of 1939 did not repeal the right of the City to tax the occupation of carters.

[fols. 118-119] IN SUPREME COURT OF ILLINOIS

ARGUMENT AND SUBMISSION—March 21, 1950

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of

counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by Arthur Magid for appellant and by C. D. Snewind for appellee is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 120] IN SUPREME COURT OF ILLINOIS

Docket No. 31312—Agenda 16—March, 1950

The City of Chicago, Appellant, v. The Willett Company, Appellee.

OPINION—May 18, 1950

Mr. JUSTICE FULTON delivered the opinion of the court:

This cause is heard here on direct appeal from a judgment of the municipal court of Chicago, finding the Willett Company, hereinafter referred to as defendant, not guilty in an action brought by the city of Chicago, which charged said defendant with engaging in the business of a carter within the city of Chicago without first having obtained or paid for a license therefor, in violation of chapter 163, Municipal Code of Chicago.

The cause was heard by the court without a jury. The parties filed a stipulation which, with certain testimony of the executive vice-president of the defendant company, constitutes the record in the cause. The trial court has certified that the validity of a municipal ordinance is involved.

Chapter 163 of the Chicago Municipal Code relates to carters and provides, in brief, that any dray type of vehicle driven or employed for the purpose of transporting or conveying property and merchandise within the city for hire or reward shall be deemed a cart within the meaning of the chapter, whether the vehicle be employed or hired from any

public stand, public way, barn, garage, office or other place, or whether it be hired for the day, week, month or year. A license tax is imposed by the ordinance for each cart operated or controlled by every carter according to established fees and schedules.

The foregoing section as passed repeals the prior public carters ordinance as well as the furniture movers ordinance.

The defendant is an Illinois corporation, with its offices in Chicago, and was engaged in the business of transporting property by motor vehicles for hire in the city of Chicago. It operates as a contract carrier of commodities by motor vehicle from points and places within the State of Illinois, to points and places in the States of Indiana and Wisconsin. It further carries property within the city of Chicago from point to point under contract with various firms and other interstate and intrastate carriers entering the city. It holds itself out to serve the public and connecting carriers and forwarding companies generally up to the limit of its capacity, either (a) by leasing trucks with drivers to shippers by the hour, day, week or year or other period, (b) by making contracts with shippers to perform [fol. 121] all trucking for a fixed period, (c) by giving occasional service or handling single shipments in local cartage for any shipper at a rate per hundred pounds, per ton, per piece, or other unit, (d) by distributing pooling cars, and (e) by rendering collection and delivery service, station or substation service, for rail, water and highway motor carriers and forwarding companies, either under contract or on some other basis. It was further stipulated that the motor vehicles operated by the defendant company in the course of a day's business would transport property from points within the city of Chicago to other points within the city of Chicago, from points within the city of Chicago to other points within the State of Illinois outside the city and from points in Chicago to other States surrounding Illinois and return. The defendant did not comply with the provisions of the carters ordinance, arguing that the ordinance was void and of no legal effect because it is in conflict with the constitution of the United States; it is in conflict with the constitution of Illinois; it is in conflict with section 23-51 of the Revised Cities and Villages Act; and it is in conflict with the Illinois Truck Act of 1939, as amended.

The finding of the trial court for the defendant is apparently based on the ground that the application of the ordinance to the defendant carrier's business would create a burden upon interstate commerce and that, therefore, the defendant is exempt from the provisions of the carters ordinance of the city of Chicago.

The argument of the city of Chicago, the appellant here, is to the effect that by the terms of the ordinance, the license fee is restricted to carters doing business "within the city" and that the natural meaning of those words restricts the ordinance to intracity business and it cannot apply to interstate commerce. In support of this construction, appellant cites *Pacific Express Company* v. *Seibert*, 142 U. S. 339, and related cases. It further argues that the mere fact that the defendant company is engaged in interstate commerce, as well as intrastate and intracity, does not prevent the city of Chicago from imposing an occupation tax upon the defendant with respect to the purely intracity operations in which the defendant is admittedly engaged. To support this view, they cite cases such as *Osborne* v. *Florida*, 164 U. S. 650, *Pullman Co.* v. *Adams*, 189 U. S. 420, and like cases.

The defendant, on the other hand, cites *People* v. *Hor-*
[fol. 122] *ton Motor Lines*, 281 N. Y. 196; *Northern Pacific Railway Co.* v. *Washington*, 222 U. S. 370, and *Sprout* v. *South Bend*, 277 U. S. 166, and similar cases for the proposition that the State or municipality cannot tax interstate commerce and, in situations such as the one before the court, the tax violates the constitution of the United States and imposes a burden on interstate commerce. Both parties further argue as to the validity and invalidity of the ordinance in question.

It is the law in this State that this court will give a construction to a statute which will uphold its validity. The presumption is always in favor of the validity of an ordinance passed in pursuance of statutory authority. *City of Chicago* v. *Hebard Express and Van Co.*, 301 Ill. 570.

It seems clear that the ordinance in question is not invalid by its terms, but could be held to be so by reason of its application to certain operators of carts, under the definition of the ordinance, in and around the city of Chicago. In other words, the ordinance is not invalid *per se*. It is only upon its application that a question of its constitutionality can arise. In *Pacific Express Co.* v. *Seibert*,

142 U. S. 339, it was said, " 'Business done within this State' cannot be made to mean business done between that State and other States. We, therefore, concur in the view of the court below that it was not the legislative intention, in the enactment of this statute, to impinge upon interstate commerce, or to interfere with it in any way whatever; and that the statute, when fairly construed, does not in any manner interfere with interstate commerce." Thus, we find that the ordinance in question here, when construed in the light of the above language, is invalid only when it is applied to interstate commerce in its fullest sense.

As contended by the city, there is no question but what a license tax may be imposed upon the defendant for its intracity business. In *Osborne v. Florida,* 164 U. S. 650, a Florida statute was involved, imposing an annual license tax on all express companies doing business in the State. The Supreme Court of Florida has construed the statute as not applying to interstate business, but only to local business, intrastate in character. The Supreme Court of Florida held the statute to be valid and the United States Supreme Court affirmed this holding, pointing out that the construction of the statute by the Supreme Court of Florida, as applying only to intrastate business, was binding upon it and would be accepted by it. The case is authority for [fol. 123] the rule that a statute so construed does not exempt the express company from taxation upon its business which is solely within the State, even though at the same time the same company may do a business which is interstate in character.

However, the mere operation of trucks by the defendant "within the city" is not sufficient to determine the issues here. The legal effect of such operation must be considered.

As we have previously stated, the question here is one of application of the ordinance to the practical aspects of the hauling done by the defendant. In addition to arguing that the statute itself provides only for taxation upon persons transporting property "within the city" and that this deals only with intrastate business, the city of Chicago admits that where the intracity and interstate operations are inseparable, and the defendant cannot separate the two, nor continue to engage in business if separation is attempted, the argument as to the tax being a burden upon interstate commerce might apply.

It is only when a separation, in fact, of intrastate and interstate business exists that a like separation may be recognized between the control of the State and that of the nation. (See *Osborne* v. *Florida*, 164 U. S. 650, and *Pullman Co.* v. *Adams*, 189 U. S. 420.) The city argues, however, that no inseparability has been shown and that the defendant has not met the burden of proof in this regard. The burden is on him who asserts that, although actually within, the traffic is legally outside the State; unless the interstate character is established, locality determines the question of jurisdiction. *Pennsylvania Railroad Co.* v. *Knight*, 192 U. S. 21.

The only evidence in this record is that of Howard L. Willett, Jr., who is the executive vice-president of the defendant company, and who stated on the stand that his company engaged in interstate, intrastate and local freight in the city of Chicago. It is not clear from the testimony or the questions asked of Willett whether or not he was familiar with the legal meaning of the term "intercity freight." It is apparent that the Willett Company operates from Chicago to surrounding States and in that manner engages in interstate commerce. They also engage as a contract carrier with other carriers coming into the city of Chicago from outside the State of Illinois. Whether or not by intercity operation Willett meant only that his trucks operated within the city of Chicago is another thing. The [fol. 124] record is silent on that point.

He did testify that it was not possible to separate the intrastate freight from the interstate freight and the intercity freight hauled by the defendant. He further stated that defendant could not keep records of the shipments it made each day within the city of Chicago as to interstate, intracity or intrastate character.

It appears, insofar as we can ascertain from this record, that the defendant herein operates its trucks under contract with large industries, and, in the main, with other interstate carriers bringing property into the city of Chicago. The defendant itself does not determine what articles it shall carry on its trucks, but carries articles of all kinds, in interstate, intrastate and intracity traffic. It has no basis for differentiating between the shipments which it carries on its trucks, but carries what is given it by the contractor, retailer or carrier with whom it is dealing, and on every

load the three types of property are so intermingled as to be impossible of separation. It is apparent from these statements that the type of business done by the defendant herein is not one generally considered to be within the meaning of a carter's ordinance. The defendant does not keep records of the shipments because he does not handle the shipments as such. He does not go from house to house picking up shipments for delivery within the city of Chicago, but his entire business is concerned with hauling under contract for various firms, enterprises and other contract carriers in the city of Chicago.

The cross-examination by the city of Chicago did not counteract the statements of this witness, and his statements as to nonseparability remained unchallenged in the record. All of the trucks, over 1200 of them, are engaged in the type of work which has been described. It was evident that the type of contracts the defendant has with other companies deal mainly with other carriers. The defendant has contracts with the Pennsylvania Railroad, Acme Fast Freight, Air Cargo, Ryerson Steel, U. S. Steel, Youngstown Steel, H. J. Heinz Company, Standard Brands Company, Glidden Company and others of that nature. All of these companies have either offices or plants in the city of Chicago.

On cross-examination the witness testified that insofar as the operations of the defendant were concerned, there was no possible way in which they could determine the proportion of local transportation as compared to intra-[fol. 125] state and interstate, but he did state that in all the operations, every truck had some of all types of freight on it.

In view of the uncontradicted testimony in the record, it would appear that the defendant is not able to separate its intracity business from its interstate business, nor can it keep records of such business, nor can it continue in any one of the operations without giving up its entire business. In other words, it needs all of its business to keep in operation.

In *Pullman Co.* v. *Adams*, 189 U. S. 420, a Mississippi statute was involved, imposing a privilege tax on each sleeping-car company carrying passengers from one point to another within the State. The proof showed that the defendant company carried passengers into Mississippi

from points outside the State, or out of Mississippi from points within the State, but that the same cars also carried passengers from point to point within the State. It was contended that the tax was invalid as a burden upon interstate commerce. The United States Supreme Court affirmed the judgment of the State court, holding the tax valid, saying that the defendant had the right to choose between what points it would carry persons, and, therefore, the right to give up the carriage of passengers from one point to another within the State. The court further said, "The company cannot complain of being taxed for the privilege of doing a local business which it is free to renounce." The distinguishing factor in that case and in the situation before us is that the record is clear and uncontroverted that the defendant herein is not free to renounce. The record is uncontradicted that the defendant cannot engage in any one portion of its business without the other.

In *Sprout* v. *South Bend*, 277 U. S. 166, the Supreme Court of the United States, considering an ordinance of the city of South Bend imposing a license on motor busses, stated, "But in order that the fee or tax shall be valid, it must appear that it is imposed solely on account of the intrastate business; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the imposition; and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate business." The evidence in the instant cause makes this language applicable to the case here.

The case is similar in some respects to *People* v. *Horton* [fol. 126] *Motor Lines, Inc.*, 281 N. Y. 196, 22 N. E. 2d 338. That case involved an interstate motor carrier which operated a fleet of trucks within the city of New York to deliver and pick up freight to and from its New York terminal or to other shippers within the city. The question involved was whether the public carters ordinance could be applied to the defendant's small trucks which engaged primarily in interstate commerce, although all operated "within the city." In determining that the defendant was not subject to the carters ordinance, the court cited *Northern Pacific Railway Co.* v. *Washington ex rel. Atkinson*, 222 U. S. 370. In that case it was said, "The train, although moving from

one point to another in the State of Washington, was hauling merchandise from points outside of the State destined to points within the State and from points within the State to points in British Columbia, as well as in carrying merchandise which had originated outside the State and was in transit through the State to a foreign destination. This transportation was interstate commerce; and the train was an interstate train."

The language of this last cited case is applicable here. While the defendant may have intracity loads in part upon its trucks, it is clear that every load combines intrastate and interstate property as well. The incidental carrying of loads within the city does not make the defendant subject to the license tax here. The defendant cannot separate its loads, nor can it discontinue any part of the service. Under these facts, we must conclude that the defendant is engaged in interstate commerce within the meaning of that term and is not subject to the license tax here in question.

Under the view we have taken in this cause, it is not necessary to consider the other arguments made by the appellant and appellee. For the reasons stated herein, the judgment of the municipal court of the city of Chicago is affirmed.

Judgment affirmed.

Thompson, C. J., and Crampton, J., dissenting.

[fols. 127-128] In Supreme Court of Illinois

No. 31312

City of Chicago, a Municipal Corporation, Appellant,

vs.

The Willett Company, an Illinois Corporation, Appellee

Judgment—May 18, 1950

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the

record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Municipal Court of the City of Chicago aforesaid, Be Affirmed in All Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant Costs by it in this behalf expended, to be taxed, in due course of law.

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 27th day of September, 1950.

(S.) Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois. (Seal.)

[fol. 129] In the Supreme Court of Illinois, November Term, A. D. 1949

City of Chicago, a Municipal Corporation, Appellant,

vs.

The Willett Company, an Illinois Corporation, Appellee

Appeal from Municipal Court of Chicago. Honorable R. P. Drymalski, Judge Presiding

Excerpts from Petition for Rehearing—Filed June 7, 1950

[fol. 130] 5

The opinion (pp. 5-6) treats the fact that appellee also carried freight for interstate shippers and railroads upon the same trucks that it carried purely intracity shipments as showing nonseparability between the two types of commerce.

Another controlling point which the court overlooked is that proof of nonseparability alone is insufficient to prevent application of the ordinance to appellee; it must further be shown that the tax levied by the ordinance does in fact impose an undue burden upon appellee's interstate business.

[fols. 132-133] In Supreme Court of Illinois

[Title omitted]

Order Denying Rehearing—September 18, 1950

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

[fol. 134] In the Supreme Court of Illinois, November Term, A. D. 1949

[Title omitted]

Notice of Motion

To: Daley & Lynch, Rm. 1631, 33 N. LaSalle St., Chicago, Illinois, Attorney for Appellee:

Kindly take notice that we shall file with the Clerk of the Supreme Court in the above entitled cause for due presentation to the said court, our Petition to Recall and Stay the Mandate issued by said court on the judgment of affirmance entered in this cause, pending the final disposition by the Supreme Court of the United States of a petition for a writ of certiorari which we intend to file in due course to obtain a review by the Supreme Court of the United States of the said judgment of affirmance entered by the Supreme Court of Illinois in the above entitled cause; and that we shall further file with the Clerk of the Supreme Court of Illinois a certain Praecipe for Record;

copies of which Petition and Praecipe are hereto attached and herewith served upon you.

(s) John J. Mortimer, Acting Corporation Counsel of the City of Chicago, 511 City Hall, Chicago 2, Illinois.

Received a copy of the above and foregoing Notice, together with copies of the Petition and Praecipe therein referred to, this —— day of November 1950

—— ——, Attorney for Appellee.

[fol. 135] IN THE SUPREME COURT OF ILLINOIS,
NOVEMBER TERM, A. D. 1949

[Title omitted]

PETITION FOR RECALL AND STAY OF MANDATE PENDING DISPOSITION OF PETITION TO UNITED STATES SUPREME COURT FOR WRIT OF CERTIORARI—Filed November 29, 1950

Now comes City of Chicago, a municipal corporation, appellant in the above entitled cause, by John J. Mortimer, Acting Corporation Counsel of the City of Chicago, its attorney, and represents unto this Honorable Court as follows:

1. That on May 18, 1950, this court rendered its decision and filed its opinion in the above cause, affirming the judgment of the Municipal Court of Chicago, and holding that Chapter 163, Municipal Code of Chicago (otherwise known as the Carters Ordinance) was violative of the commerce clause of the Federal Constitution, and was therefore void as applied to appellee's business.

2. That on September 18, 1950, this court denied appellant's petition for a rehearing.

3. That, thereafter, the mandate of this court duly issued on said judgment of affirmance.

4. That appellant intends to file in due course a Petition in the Supreme Court of the United States for a writ of certiorari to review the said judgment of this court.

[fol. 135a] 5. Wherefore, appellant prays that this court recall its said mandate heretofore issued on its said judgment as aforesaid, and that this court stay said mandate

until the final disposition by the Supreme Court of the United States of said Petition for a writ of certiorari.

City of Chicago, a municipal corporation, Appellant, by John J. Mortimer, Acting Corporation Counsel of the City of Chicago, its Attorney.

Duly sworn to by Arthur Magid, jurat omitted in printing.

[fol. 136] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER RECALLING AND STAYING MANDATE—November 30, 1950

And now, on this day, the Court having duly considered the motion by appellant for recall of mandate, and that the same be stayed until final disposition of the writ of certiorari to be filed in the United States Supreme Court, and being now fully advised of and concerning the premises doth allow said motion.

[fol. 137] IN THE SUPREME COURT OF ILLINOIS, NOVEMBER TERM, A. D. 1949

[Title omitted]

PRAECIPE FOR RECORD

To the Honorable Clerk of the Supreme Court of Illinois:

Kindly prepare and certify, for purpose of obtaining a review by the Supreme Court of the United States, the complete record in the above entitled cause, including, but not limited to, the following:

1. Abstract of Record.
2. Brief and Argument for Appellant.
3. Brief and Argument for Appellee.
4. Reply Brief for Appellant.
5. Judgment entered by this court on May 18, 1950, affirming judgment of trial court.
6. Opinion filed by this court on May 18, 1950.

7. Petition for Rehearing.

8. Order entered September 18, 1950, denying Petition for Rehearing.

9. Petition for Recall and stay of Mandate.

10. Order entered on said Petition for Recall and stay of Mandate.

[fol. 138] 11. All other proceedings had and orders entered in the above entitled cause.

12. Certificate of the clerk of this court to the complete record in this cause.

John J. Mortimer, Acting Corporation Counsel of the City of Chicago, Attorney for Appellant.

[fol. 139] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 140] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. —

CITY OF CHICAGO, a Municipal Corporation, Petitioner,

vs.

THE WILLETT COMPANY, an Illinois Corporation

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 16", 1951.

Fred M. Vinson, Chief Justice of the United States.

Dated this 15" day of December, 1950.

[fol. 141] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, A. D. 1950

[Title omitted]

STIPULATION TO PRINT CERTAIN PORTIONS OF THE RECORD—Filed December 26, 1950

It is hereby stipulated by and between the parties hereto, by and through their respective attorneys, pursuant to paragraph 8 of Rule 38 of the Supreme Court of the United States, that the Printed Transcript of the Record should contain all of the matter included in the Certified Transcript of the Record, except as follows:

[fol. 142] From the "Brief and Argument for Appellant", print only the following:

(Cover Page) Print the cover page, except the names of counsel.

(Pages 10-12) Print from "(4) The Issues and the Decision Thereon", on page 10, through the end of page 12.

(Pages 13-18) Print the caption "Points and Authorities", on page 13, and all the main headings (Points I to VII, both inclusive, on pages 13 to 18). Omit all sub-headings and all the citations.

From the "Brief and Argument for Appellee", print only the following:

(Cover Page) Print the cover page, except the names of counsel.

(Pages 3-4) Print from "Defendant's Theory of the Case", on page 3, through the end of page 4.

(Pages 5-6) Print the caption "Points and Authorities," on page 5, and all the main headings (Points I to V, both inclusive, on pages 5 and 6). Omit all the citations.

From the "Reply Brief for Appellant", print only the following:

(Cover Page) Print the cover page, except the names of counsel.

(Page 2) Print the heading appearing in bold face type on page 2.

(Page 6) Print the heading

[fol. 143] (Pages 12-13) Print from the last incomplete paragraph on page 12, beginning with the word "However", through to the end of the next to the last paragraph on page 13, ending with the word "confiscatory".

(Pages 14, 18 and 20) Print the headings appearing in bold face type on pages 14, 18 and 20.

From the "Petition for Rehearing", print only the following:

(Cover Page) Print the cover page, except the names of counsel.

(Page 4) "The opinion (pp. 5-6) treats the fact that appellee also carried freight for interstate shippers and railroads upon the same trucks that it carried purely intra-city shipments as showing nonseparability between the two types of commerce."

(Page 7) "Another controlling point which the court overlooked is that proof of nonseparability alone is insufficient to prevent application of the ordinance to appellee; it must further be shown that the tax levied by the ordinance does in fact impose an undue burden upon appellee's interstate business."

[fols. 144-145] Except as above stated, the Certified Transcript of the Record, shall be printed in full.

John J. Mortimer, Corporation Counsel of the City of Chicago, a Municipal Corporation; L. Louis Karton, Head of Appeals and Review Division, Assistant Corporation Counsel; Arthur Magid, Assistant Corporation Counsel, 511 City Hall, Chicago 2, Illinois, Attorneys for the Petitioner. Richard J. Daley, By Charles D. Snewind; William J. Lynch, Jr., By Charles D. Snewind; Charles D. Snewind, Attorneys for the Respondent.

[fol. 1] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of May in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice; Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter V. Schaefer; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that, to-wit: on the 31st day of May, A. D. 1951, the same being one of the days in vacation after the Term of Court aforesaid, there was filed in the Office of the Clerk of the Supreme Court of the State of Illinois a certain mandate from the United States Supreme Court wherein the judgment of this Court was vacated, and this cause remanded to the Supreme Court of Illinois for clarification, in a cause entitled in this Court: No. 31312, City of Chicago, a municipal corporation, Appellant, vs. The Willett Company, an Illinois corporation, Appellee, Appeal from Municipal Court, City of Chicago, 49MC 131413, which mandate is in the words and figures following, to-wit:

[fol. 2] UNITED STATES OF AMERICA, ss:

The President of the United States of America

To the Honorable the Judges of the Supreme Court of the State of Illinois, Greeting:

Whereas, lately in the Supreme Court of the State of Illinois, before you, or some of you, in a cause between City of Chicago, a Municipal Corporation, Appellant, and The Willett Company, an Illinois Corporation, Appellee, No. 31312, wherein the judgment of the said Supreme Court, entered in said cause on 18th day of May, A. D. 1950, was in favor of the said appellee, Willett Company, and against

the said appellant; as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Supreme Court of the United States by virtue of a writ of certiorari, agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and fifty, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record and was duly submitted:

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause be, and the same is hereby vacated without costs.

It is further ordered that this cause, be, and the same is hereby, remanded to the Supreme Court of Illinois for [fol. 3] clarification by that court to show, in the light of Minnesota v. National Tea Co., 309 U. S. 551, whether the judgment herein rests on an adequate and independent state ground or whether decision of a federal question was necessary to the judgment rendered.

April 23, 1951.

And the same is hereby remanded to you, the said judges of the said Supreme Court of the State of Illinois, in order that such proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of certiorari notwithstanding.

Witness the Honorable Fred M. Vinson, Chief Justice of the United States the 29th day of May, in the year of our Lord one thousand nine hundred and fifty-one.

Charles Elmore Cropley, Clerk of the Supreme Court of the United States, by Hugh W. Barr, Deputy.

[fol. 4] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of November in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Joseph E. Daily, Chief Justice; Justice William J. Fulton, Justice Walter V. Schaefer, Justice Ralph L. Maxwell, Justice Albert M. Crampton, Justice George W. Bristow, Justice Harry B. Hershey; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.
Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that afterwards, to-wit: on the 17th day of December, A. D. 1951, the same being one of the days in vacation after the Term of Court aforesaid, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 31312.

CITY OF CHICAGO, a Municipal Corporation, Appellant,

vs.

THE WILLETT COMPANY, an Illinois Corporation, Appellee

Appeal from Municipal Court, City of Chicago

[fol. 5] Docket No. 31312.

The City of Chicago, Appellant, v. The Willett Company, Appellee

Mr. Justice FULTON delivered the opinion of the court:

Pursuant to the order entered by the United States Supreme Court in the cause of *City of Chicago* v. *The Willett Co.* (No. 493, October term, 1950, of said court,) requesting a clarification of our opinion in the same cause, reported

in 406 Ill. 286, as to whether or not a decision of a Federal question was necessary, the basis for the opinion in said cause is as follows:

Osborne v. *Florida*, 164 U. S. 650, and *Pullman Co.* v. *Adams*, 189 U. S. 420, hold that only when a separation, in fact, of intrastate and interstate business exists a like separation may be recognized between the control of the State and that of the nation to apply a tax such as proposed here. The burden of proving inseparability is on him who asserts that, although actually within, the traffic is legally outside the State; that unless the interstate character is established, locality determines the question of jurisdiction. (*Pennsylvania Railroad Co.* v. *Knight*, 192 U. S. 21.) *Sprout* v. *South Bend*, 277 U. S. 166, holds that in order that the fee or tax be valid it must appear that it is imposed solely on account of the intrastate business; that the amount exacted does not increase because of the interstate business done; and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate business.

The sole evidence in the cause, to which fact situation the above rules of law had to be applied, was to the effect that the Willett Company is not able to separate intrastate from interstate and inter-city business, nor can it keep records of such business or degrees of business, nor can it continue in any one of its operations without giving up its entire business. The city did not contradict, oppose or challenge this evidence either by introducing evidence in opposition thereto or by cross-examining the witnesses to challenge their veracity.

Our decision is that the Chicago carters ordinance is valid, but, in light of the rules of the foregoing cases, could not be applied to the Willett Company because of the uncontradicted evidence which removes the Willett Company from an application of the license tax.

The judgment of the municipal court of the city of Chicago is affirmed.

Judgment affirmed.

[fol. 6] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of November in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Joseph E. Daily, Chief Justice; Justice William J. Fulton, Justice Walter V. Schaefer, Justice Ralph L. Maxwell, Justice Albert M. Crampton, Justice George W. Bristow, Justice Harry B. Hershey; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.
Attest: Earle Benjamin Searcy, Clerk.

Be It Remembered, that to-wit: on the 17th day of December 1951 the same being one of the days in vacation after the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

No. 31312

CITY OF CHICAGO, a Municipal Corporation, Appellant

vs.

THE WILLETT COMPANY, an Illinois Corporation, Appellee

Appeal from Municipal Court, City of Chicago, 49MC 131413

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Municipal Court of the City of Chicago aforesaid, Be Affirmed In All Things and Stand In Full Force and

Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant Costs by it in this behalf expended, to be taxed, in due course of law.

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this day of ———, 19——.

—— ——, Clerk, Supreme Court of the State of Illinois.

[fol. 7] And afterwards, to-wit: on the 3rd day of January, A.D. 1951, the same being one of the days in vacation after the Term of Court aforesaid, there was filed in the Office of the Clerk of the Supreme Court a certain notice, petition and order entered by Justice Walter V. Schaefer staying mandate pending the final disposition by the Supreme Court of the United States of the petition for a writ of certiorari proposed to be filed by the appellant to obtain a review of said judgment of December 17, 1951; together with praecipe for record, which documents are in the words and figures following, to-wit:

[fol. 8] [Stamp:] Filed Jan. 3, 1952. Earle Benjamin Searcy, Clerk.

No. 31312

In the Supreme Court of Illinois, November Term, A. D. 1949

City of Chicago, a Municipal Corporation, Appellant,

vs.

The Willett Company, an Illinois corporation, Appellee

Appeal from Municipal Court of Chicago

Honorable R. P. Drymalski, Judge Presiding

Notice

To: Daley & Lynch, Rm. 1631, 33 N. LaSalle St., Chicago, Illinois, Charles D. Snewind, Suite 1410 69 W. Washington St., Chicago, Illinois, Attorneys for Appellee.

Kindly take notice that we shall file with the Clerk of the Supreme Court in the above entitled cause for due presentation to the said court, our Petition to Stay the issuance of the Mandate of said court on the judgment of affirmance entered in this cause on December 17, 1951, pending the final disposition by the Supreme Court of the United States of a petition for a writ of certiorari which we intend to file in due course to obtain a review by the Supreme Court of the United States of the said judgment of affirmance entered on December 17, 1951, by the Supreme Court of Illinois in the above entitled cause; and that we shall further file with the Clerk of the Supreme Court of Illinois a certain Praecipe for Record; copies of which Petition and Praecipe are hereto attached and herewith served upon you.

John J. Mortimer, Corporation Counsel of the City of Chicago, 511 City Hall, Chicago 2, Illinois.

Received a copy of the above and foregoing Notice, together with copies of the Petition and Praecipe therein referred to, this 26 day of December 1951.

Daley & Lynch, by Maran. Charles D. Snewind, Attorneys for Appellee.

[fol. 9] No. 31312

IN THE SUPREME COURT OF ILLINOIS, NOVEMBER TERM, A. D. 1951

CITY OF CHICAGO, a Municipal Corporation, Appellant,

vs.

THE WILLETT COMPANY, an Illinois Corporation, Appellee.

Appeal from Municipal Court of Chicago

Honorable R. P. Drymalski, Judge Presiding.

PETITION FOR STAY OF MANDATE PENDING DISPOSITION OF PETITION TO UNITED STATES SUPREME COURT FOR WRIT OF CERTIORARI

Now comes City of Chicago, a Municipal Corporation, appellant in the above entitled cause, by John J. Mortimer, Corporation Counsel of the City of Chicago, its attorney, and represents unto this Honorable Court as follows:

1. That on December 17, 1951, this court rendered its decision and filed its opinion in the above cause, affirming the judgment of the Municipal Court of Chicago, and holding that Chapter 163, Municipal Code of Chicago (otherwise known as the Carters Ordinance) was violative of the commerce clause of the Federal Constitution, and was therefore void as applied to appellee's business.

2. That appellant intends to file in due course a Petition in the Supreme Court of the United States for a writ of certiorari to review the said judgment of this court.

Wherefore, appellant prays that this court stay the issuance of its said mandate on its said judgment of December 17, 1951 until the final disposition by the Supreme Court of [fol. 10] the United States of said Petition for a writ of certiorari.

City of Chicago, a Municipal Corporation, Appellant,
by John J. Mortimer, Corporation Counsel of the City of Chicago, Its Attorney.

State of Illinois,
County of Cook, ss.:

Arthur Magid, being first duly sworn, upon his oath deposes and says that he is an Assistant Corporation Counsel of the City of Chicago, appellant herein, and is duly authorized to make this verification on behalf of said appellant; that he has read the above and foregoing Petition; that he knows the contents thereof; and that the same are true in substance and in fact.

Arthur Magid.

Subscribed and Sworn to before me, a Notary Public, this 20 day of December, 1951.

Edward R. Hartigan, Notary Public (Seal).

[fol. 11] No. 31312

In the Supreme Court of Illinois, November Term, A. D. 1949

City of Chicago, a Municipal Corporation, Appellant,

vs.

The Willett Company, an Illinois Corporation, Appellee

Appeal from Municipal Court of Chicago

Honorable R. P. Drymalski, Judge Presiding

Order

This cause coming on to be heard before me, a Justice of the Supreme Court of Illinois, in vacation after the November, 1951, Term of this Court, on the petition of the appellant to stay the mandate of this Court on the judgment entered herein on December 17, 1951, pending the final disposition by the Supreme Court of the United States of appellant's proposed petition for a writ of certiorari, and appellee having had due notice of the filing of said petition for stay of mandate, and said petition having been duly considered by me, and being fully advised in the premises;

It is hereby ordered that the mandate of this Court on said judgment of December 17, 1951, be and is hereby stayed pending the final disposition by the Supreme Court of the United States of the petition for a writ of certiorari proposed to be filed by the appellant to obtain a review of said judgment of December 17, 1951.

Enter: Walter V. Schaefer, Justice.

Dated January 2, 1952.

[fol. 12] No. 31312

IN THE SUPREME COURT OF ILLINOIS, NOVEMBER TERM, A. D. 1949

CITY OF CHICAGO, a Municipal Corporation, Appellant,

vs.

THE WILLETT COMPANY, an Illinois Corporation, Appellee

Appeal from Municipal Court of Chicago

Honorable R. P. Drymalski, Judge Presiding.

PRAECIPE FOR RECORD

To the Honorable Clerk of the Supreme Court of Illinois:

Kindly prepare and certify, for the purpose of obtaining a review by the Supreme Court of the United States, the complete record in the above entitled cause commencing with the Mandate issued by the Supreme Court of the United States pursuant to its order granting certiorari in this cause, including, but not limited to the following:

1. Mandate of the Supreme Court of the United States.

2. Clarifying opinion of this Court rendered and filed on December 17, 1951.

3. Judgment order entered on December 17, 1951, affirming the judgment of the Municipal Court of the City of Chicago.

4. Notice to attorneys for appellee of filing the Petition for Stay of Mandate and Praecipe for Record, with Proof of Service of said Notice, Petition and Praecipe.

5. Petition for Stay of Mandate.

[fol. 13] 6. Order entered on said Petition for Stay of Mandate.

7. Praecipe for Record.

8. All other proceedings had and orders entered in the above entitled cause subsequent to the receipt of the Mandate issued out of the Supreme Court of the United States.

9. Certificate of the Clerk of this Court to the Transcript of the Record.

John J. Mortimer, Corporation Counsel of the City of Chicago, Attorney for Appellant.

[fol. 14] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and Seal thereof, do hereby certify the foregoing to be a true copy of proceedings of this Court since the filing of the mandate of the United States Supreme Court in a certain cause entitled: No. 31312, City of Chicago, a municipal corporation, Appellant, vs. The Willett Company, an Illinois corporation, Appellee, Appeal from Municipal Court, City of Chicago, 49MC 131413, filed in this office on the 10th day of September, A.D. 1949.

In Witness Whereof; I have hereunto subscribed my name and affixed the Seal of said court this 4th day of January 1952.

Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois. (Seal.)

[fol. 15] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 644

THE CITY OF CHICAGO, a Municipal Corporation, Petitioner,

vs.

THE WILLETT COMPANY, an Illinois Corporation

ORDER ALLOWING CERTIORARI—Filed May 5, 1952

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.